

ISLAND COUNTY HEARING EXAMINER

RULES OF PROCEDURE

1. Expeditious Proceedings

It is the policy of the Hearing Examiner that, to the extent practicable and consistent with requirements of law, public hearings shall be conducted expeditiously. In the conduct of such proceedings the Hearing Examiner and all parties, or their agents, shall make every effort at each stage of a proceeding to avoid delay.

2. Ex Parte Communications

- a. No person, nor his or her agent, employee, or representative, who is interested in a particular petition or application which is designated for an adjudicatory hearing shall communicate ex parte, directly or indirectly, with the Hearing Examiner concerning the merits of that or a factually related petition or application. This rule shall not prohibit ex parte communications concerning procedural matters.
- b. The Hearing Examiner shall not communicate ex parte directly or indirectly, with any person, nor his or her agent, employee or representative, interested in a particular petition or application which is designated for an adjudicatory hearing, with regard to the merits of that, or a factually related petition or application. This rule shall not prohibit ex parte communications concerning procedural matters.
- c. If a substantial prohibited ex parte communication is made to or by the Hearing Examiner, such communication shall be publicly disclosed and the Examiner shall, within his or her discretion, abstain from participating in any consideration of the matter.

3. Sworn Statement of Notice

A sworn statement attesting to the written notice of a given public hearing shall be made a part of each official case record.

4. Public Hearings

a. Frequency

Hearings will normally be scheduled the first and third Thursdays of each month. Hearings may be held on a more frequent basis, if it becomes necessary. Where possible, hearings involving Camano Island sites will be held on Camano Island. Where an applicant seeks an immediate hearing, or for other good cause, the Hearing Examiner may schedule Camano matters in Coupeville or vice versa.

b. Format

The format for a public hearing will be of an informal nature yet designed in such a way that the evidence and facts relevant to a particular proceeding will become readily and efficiently available to the Hearing Examiner. A public hearing shall include, but need not be limited to, the following elements: a report by the departmental staff which shall include introduction of the official file, reference to visual aids (maps or plans) and a summary of the recommendation of the Department; testimony by the applicant or petitioner; testimony in support; testimony of opposing parties; opportunity for cross-examination and rebuttal; and opportunity for questions by the Hearing Examiner.

c. View Trip

When necessary to a full understanding of the case, the Hearing Examiner shall inspect the site prior or subsequent to the hearing. Failure to inspect the site will not render the Examiner's recommendation or decision void.

5. Presence of Legal Counsel at Public Hearings or Meetings

At the request and discretion of the Hearing Examiner, a representative of the Prosecuting Attorney may be present at public hearings or meetings to advise on matters of law and procedure.

6. Applicant's Agent, Representative or Legal Counsel

If the applicant is represented by other than himself, documentation must be in the record acknowledging that the applicant has given permission for such representation.

7. Evidence

- a. Burden of Proof. In each particular proceeding, the appellant, applicant or proponent of an individual petition, application or appeal shall have the burden of proof except as otherwise required by the Island County Code or law.
- b. Admissibility. The hearing generally will not be conducted according to technical rules relating to evidence and procedure. Any relevant evidence shall be admitted if it is the type which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The rules of privilege shall be effective to the extent recognized by law. Relevant material and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable and unduly repetitious evidence may be excluded.
- c. Copies. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.
- d. Official Notice. The Hearing Examiner may take official notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within his or her specialized knowledge. When a recommendation or decision of the Hearing Examiner rests, in whole or in part, upon the taking of official notice of a material fact not appearing in the evidence of the record, opportunity to disprove such facts so noted shall be granted any affected person making timely motion therefore. The Hearing Examiner shall not take notice of disputed adjudicative facts that are at the center of a particular proceeding.
- e. Evidence Received Subsequent to the Hearing. If additional evidence is submitted after the public hearing, it will be considered only upon a showing of significant relevance and good cause for delay in its submission. All parties of record will be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.

8. Record

- a. The record of a hearing conducted by the Hearing Examiner shall include, but need not be limited to, the following materials.
 - (1) The application or petition;
 - (2) The departmental staff reports;
 - (3) All evidence received or considered, which shall include all exhibits and other materials filed;
 - (4) A statement of all matters noticed;
 - (5) A decision or a recommended decision containing the findings and conclusions of the Hearing Examiner;
 - (6) Recordings made on electronic equipment; and
 - (7) An environmental determination made pursuant to the State Environmental Policy Act of 1971 (SEPA), if applicable.
- b. Hearings shall be electronically recorded and such recordings shall be a part of the official case record. Copies of the electronic recordings of a particular proceeding shall be made available to the public on request and the reasonable cost of such copying shall be paid by the requestor.
- c. Copies of any written materials in the record may be obtained by any interested person, although that person shall be responsible for paying the cost of producing such material.

9. Testimony

- a. Oath. All testimony before the Hearing Examiner shall be taken under oath.
- b. Subpoena Powers. The Hearing Examiner shall have the power to issue summons for and compel appearance of witnesses and production of documents and materials pursuant to ICC 16.19.110.

10. Computation of Time

Computation of any period of time prescribed or allowed by these rules shall begin with the first business day following that on which the act or event initiating such period of time shall have occurred. When the last day

of the period so computed is a Saturday, Sunday or National or State holiday, the period shall run until the end of the next business day.

11. Definitions

The following definitions shall apply, unless context or subject matter otherwise requires:

- a. **Comprehensive Plan** means all development goals and policies which have been adopted by the Board of County Commissioners which are in effect at the time of submission of a petition or application.
- b. **Commission** means the Board of Island County Commissioners.
- c. **Examiner** means the Hearing Examiner.
- d. **Interested Person** means any individual, partnership, corporation, association, or public or private organization of any character, significantly affected by or interested in proceedings before the Hearing Examiner, and shall include any party in a contested case.
- e. **Party of Record** means any of the following:
 - (1) The applicant or its representative; or
 - (2) Any persons requesting to become a party of record and paying the fee therefore;
 - (3) PROVIDED, the persons who do not qualify as a party of record may receive notice of a decision or recommendation by submitting their names and addresses to the Hearing Examiner's office with such a request.
- f. **Ex parte communication** means a written or oral communication not included in the public record and made outside of a public hearing.

12. Rights of Parties

Every party shall have the right of proper notice, cross-examination (rebuttal), presentation of evidence, objection, and all other rights essential to a fair hearing. The Hearing Examiner may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony. Cross-examination is permitted as is necessary for a full disclosure of the facts.

13. Continuation of Hearing

- a. **Cause.** The Hearing Examiner may continue or reopen proceedings for any good cause he or she deems reasonable and appropriate provided an order for such action is entered prior to the filing of the recommendation or decision.
- b. **Notification.** If the Hearing Examiner determines at a hearing that there is good cause to continue such proceeding and specifies the date, time and place, no further notice is required. When determination for further hearing is made following a hearing on a given matter, all parties of record shall be provided not less than ten (10) days notice of the date, time, place and nature of the subsequent hearing. Such notice shall also be published in the official newspaper of the County.

14. Departmental Staff Reports

- a. Where required by County Ordinance, Staff Reports shall be transmitted or mailed to the Hearing Examiner and the Applicant not less than seven days prior to the date of the public hearing. The report shall also be made available at the Department to persons interested in a particular case, not less than seven days prior to the date of the public hearing.
- b. Even when not required by County Ordinance, the Planning and Community Development Department shall prepare a Staff Report which contains a description of the matter before the Hearing Examiner, necessary history required to understand the current status of the matter, a description of the site and the general area surrounding the area, other essential facts, and a discussion of the applicable Ordinances and legal standards for all matters before the Hearing Examiner. In general, these reports shall also be available seven days prior to the date of the public hearing.
- c. Failure of the department to transmit, mail or make available the report within the required time period, may within the discretion of the Hearing Examiner, constitute grounds for continuing the scheduled public hearing. The Hearing Examiner shall consider the particular circumstances of the case, the possible prejudice to the person failing to receive a copy of the report, and the justification, if any, of the failure to comply.

15. Recommendations and Decisions

- a. **Decisions** The Hearing Examiner shall issue the decision or recommendation in a timely manner as required by Island County Code. A decision is final unless appealed.

b. **Content**

A recommendation or decision shall include a statement of:

- (1) **Summary.** The nature and background of the proceeding.
- (2) **Findings of Fact.** The findings shall include not only the findings of the ultimate facts but also the basic facts leading up to the ultimate question. The findings shall be based exclusively on the evidence presented in the hearing and those matters officially noticed.
- (3) **Conclusions.** Whenever practical, the conclusions shall be referenced to specific provisions of the law and regulations or both, together with reasons and precedents relied upon to support the same. The conclusions shall set forth the manner by which the decision would carry out and conform to the Comprehensive Plan, other official policies and objectives, and land use regulations.
- (4) **The appropriate rule, order or relief.** The decision shall be based upon a consideration of the whole record and supported by reliable, probative and substantial evidence.

c. **Disclosure of decision or recommendation**

The decision or recommendation of the Hearing Examiner is a public record and available for public review.

d. **Matters Remanded from the Commission**

In the event the Commission remands an application to the Hearing Examiner for further consideration, the Examiner shall have the discretion, subject to direction from the Commission, to determine whether or not to hold a public hearing. If it is decided that a public hearing is not required, the Examiner shall file a copy of the report with the Commission within twenty (20) calendar days of the Commission's

decision shall be issued to the Commission and all parties of record within fourteen (14) days of that date.

16. Reopening/Reconsideration of Decisions and Recommendations

- a. At any time prior to the filing of the recommendation or decision, the Hearing Examiner may reopen the proceeding for the reception of further evidence. All parties of record shall be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.
- b. Any request for reconsideration of a recommendation or decision shall be made within seven (7) days of the date of the decision. Reconsideration shall only be considered when:
 - (1) The requesting party presents new evidence which was not available at the time of hearing; or
 - (2) The requesting party can establish that the decision was based on an error of law.
 - (3) A request for reconsideration filed in a timely manner shall stay the running of any applicable appeal periods until issuance of a decision on reconsideration.
 - (4) No decision shall be amended or reversed until all parties of record have been mailed copies of all materials submitted in support of the request and have been afforded a reasonable opportunity to respond.
- c. Except for the correction of clerical errors, the jurisdiction of the Hearing Examiner is terminated upon the filing of the recommendation or decision, unless the matter is remanded to the Hearing Examiner or a proper and timely request for reconsideration is made.

17. Withdrawal of Application or Petition

The Hearing Examiner shall have the authority to authorize withdrawal of a petition or application in the following instances:

a. Withdrawal Prior to Service of Official Notice

If a withdrawal request is made before the official notice of the public hearing is published, the applicant or petitioner shall notify the Planning and Community Development Department of the withdrawal request and the withdrawal shall be automatically permitted.

b. Withdrawal After Service of Official Notice but Prior to the Public Hearing

If an applicant or petitioner requests to withdraw after the official notice of the public hearing is published, the withdrawal request shall be directed to the Hearing Examiner. Upon showing of good cause, the application or petition may be dismissed without prejudice.

c. Withdrawal at or after the Public Hearing

In the event that a withdrawal request is received at the public hearing, the Hearing Examiner shall consider whether good cause exists and whether there are any objections from any interested persons. Upon a showing of good cause, the application or petition may be dismissed without prejudice. Withdrawal requests filed subsequent to the public hearing are not to be encouraged and are to be permitted only when the applicant or petitioner satisfactorily meets a strong burden of demonstrated good cause and the absence of prejudice to interested persons.

d. Effect of Dismissal

Dismissal of a hearing item means that the matter is closed, and a new application must be filed with the County in compliance with all requisite procedures.

DATED AND EFFECTIVE THIS 11th DAY OF September, 1992.

Michael Bobbink

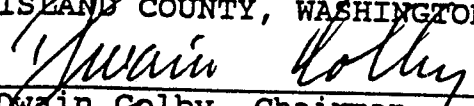
MICHAEL BOBBINK
Island County Hearing Examiner

BOARD OF ISLAND COUNTY COMMISSIONERS
PROCEDURE TO HEAR APPEALS

The following procedure is established to provide a consistent and understandable process for hearing appeals of a quasi-judicial nature coming before the Board of Island County Commissioners.

1. Staff will present a concise statement describing the nature of the appeal, the hearing history to date, the relevant facts and statutory constraints.
2. The appellant, or designated representative, will be provided an opportunity to state the basis of the appeal, new information not already presented at previous appeal hearings, and the action requested of the Board of Commissioners.
3. Other members of the public will be provided a reasonable opportunity to state any new information not already presented at a previous appeal hearing, and the action requested of the Board of Commissioners.
4. Staff will comment on new information provided by the appellant and members of the public.
5. The appellant, or designated representative, will be provided an opportunity to comment on new information provided by the members of the public and comments of county staff.
6. Unless otherwise indicated during the hearing, a decision will be announced at public meeting within 14 days based on testimony during the hearing, transcripts of previous hearings and applicable laws. The Board's decision will include the vote of individual Commissioners, and a brief statement as to the basis for the decision.
7. After the Board's decision, the Planning Director will prepare Findings of Fact and Conclusions of Law for signature by the Board of County Commissioners. A copy of this decision will be provided to the appellant by the Planning Department.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON


Dwain Colby, Chairman


Gordon H. Koetje, Member


C. R. Caldwell, Member

